

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1410
T-7658

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

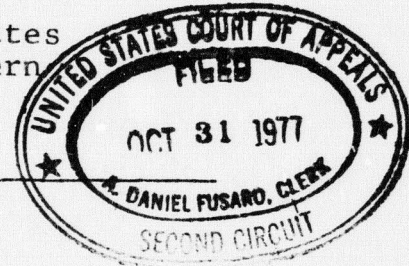
-against-

ANTHONY L. CAVALLARO,

Appellant.

On Appeal From The United States
District Court For The Northern
District of New York

APPELLANT'S BRIEF
and
APPENDIX



JOEL A. SCELSI, ESQ.
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PAGINATION AS IN ORIGINAL COPY

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*Letter and number in parentheses refer to pages of the
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

ANTHONY L. CAVALLARO,

Appellant.

BRIEF FOR THE APPELLANT
ANTHONY L. CAVALLARO:

PRELIMINARY STATEMENT:

This is an appeal undertaken in behalf of Anthony L. Cavallaro from an Order of the Honorable Lloyd F. McMahon, dated June 2, 1977, which denied a Motion by the defendant for a sentence reduction pursuant to Rule 35, Federal Rules of Criminal Procedure, which sentence was imposed by the said Lloyd F. McMahon on September 16, 1976, in Auburn, New York.

STATEMENT OF THE ISSUES
PRESENTED FOR REVIEW:

- A. Is 18 USC, Section 1201(a) unconstitutional as applied to the facts of this case?
- B. Was the sentence imposed by the trial judge illegal in violation of the Eighth Amendment to the Federal Constitution?
- C. Did the trial judge abuse his discretion in sentencing the defendant to 25 years in prison?

STATEMENT OF THE FACTS
UNDER REVIEW:

On July 13, 1976, after a trial by jury in the United States District Court for the Northern District of New York, the defendant, Anthony L. Cavallaro, was found guilty of the crime of kidnapping and aiding and abetting the kidnapping, a violation of Title 18, United States Code, Sections 1201(a) and Section 2. (A-2) At the sentencing proceedings held on September 16, 1976, before the Honorable Lloyd F. McMahon, the United States District Judge, at the Federal Building, Auburn, New York, attorney Joel A. Scelsi, Counsel for the defendant, made a brief statement wherein the following was stated: (1) Aside from the kidnapping charge under consideration, the defendant had been relatively free from crime since 1968. (A-2) (2) That since 1968, the defendant had married, went to school to learn a trade, and appeared to be on the road to rehabilitation and usefulness to society. (A-3) (3) That no force was used in putting the victim, Mary Shephardson, into the vehicle which was driven by the defendant. (A-3) (4) That Mr. Cavallaro's pre-sentence report indicated that he was gainfully employed for the past five years prior to sentencing. (A-3) (5) That the defendant's income has been sufficient to support himself and his family. (A-3) (6) That his record as an iron-worker is excellent and he gets along well with his peers on the job. (A-3) (7) That the defendant has recently bought a home and spent a great deal of time fixing it up for use by himself and his family. (A-3) (8) That the defendant has been very cooperative with the Probation Department in compiling his pre-sentence report. (A-4) (9) That the defendant is the father of two small children. (A-4)

The defendant exhibited remorse for his conduct at said sentencing. (A-5) The defendant had no intention of kidnapping the victim. (A-5) The defendant was apologetic at the time of sentencing. (A-5) The judge based his sentence, at least in part, on an incident which occurred after the alleged kidnapping and for which the defendant was not charged in Federal Court and for which he was subsequently convicted in State Court and sentenced for; namely, the shooting of another man who testified at the trial to such shooting over objections by defense counsel and whose testimony was allowed to be admitted in spite of its prejudicial impact and which obviously influenced the judge in his sentencing. (A-6) The defendant wrote a letter to the Honorable Lloyd F. McMahon shortly after receiving notification that the appeal to the Circuit Court of Appeals for the Second Circuit had resulted in an affirmance of the lower court conviction. (A-10) The judge treated the letter as a Motion for reduction of sentence, pursuant to Rule 35, Federal Rules of Criminal Procedure, and denied the Motion with an Order typed at the end of said letter and returned to the defendant at Lewisburg Federal Prison. (A-13)

POINT I:

18 USC 1201(a) IS UNCONSTITUTIONAL AS APPLIED TO THE FACTS OF THIS CASE SINCE IT PERMITTED THE TRIAL JUDGE TO IMPOSE A TERM OF IMPRISONMENT WHICH VIOLATES THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The Eighth Amendment to the Federal Constitution states as follows: "Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted." We are here concerned with the last clause of that Amendment, which is that "cruel and unusual punishments (shall not be) inflicted." The authorities and commentators generally agree that the duration of punishment, as well as the kind of punishment, comes within the purview of the constitutional proscription. This was forcefully stated by the highest court of Kentucky when it stated that ".....even though constitutional provisions against cruel and inhuman punishment are generally directed to the kind of punishment as distinguished from its duration, there nevertheless can be sentences so disproportionate to the offense committed as to shock the moral sense of the community." Workman vs. Commonwealth (Ky.) 429 SW 2nd 374 33ALR 3rd 326, 332.

It is the defendant's contention that Section 1201(a) of Title 18 of the United States Code is unconstitutional in that it provides for a punishment by imprisonment for any term of years or for life, even though the conduct which is proscribed could very easily be entirely disproportionate to the penalty imposed; for example, where an alleged kidnapped victim is enticed into a car against her will and rides with the defendant for five minutes, crossing state lines, and released unharmed. This is a violation

of the Federal Kidnapping Statute and subjects the offender to a sentence of life imprisonment if the sentencing judge so desires. If this hypothetical state of facts were to occur, it would certainly shock the conscience of the community and is intolerable to our traditional concepts of fundamental fairness.

In the case of the United States of America vs. Anthony L. Cavallaro, the facts were briefly that the victim, Mary Shephardson, went into the defendant's automobile without being forced and was returned home approximately three hours later unharmed physically. The defendant was sentenced to 25 years for violating the kidnapping statute.

In the case of Weems vs. United States (1910) 217 US 349, 54 L.Ed. 793, 30S Ct. 544, the court noted that it was a precept of justice that punishment for crimes should be graduated and proportional to the offense. Certainly, not all kidnappings are alike in their severity. Some can be minor transgressions, under the Federal Statute, involving a short ride across state lines without any violence involved. Others can involve large ransom demands accompanied by violence or threats thereof and confinements for several days, weeks or months. The legislature should distinguish between different degrees of the crime, so that the defendant convicted of violating the less serious type will not be sentenced to the same term of imprisonment as one who commits the more serious transgression.

The New York Penal Law treats this subject in Article 135 which contains 14 different sections defining different degrees of the proscribed conduct to cover the many situations that may arise and said statute provides for several degrees of punishment

depending on the type of behavior, the duration of the proscribed conduct, etc.

In the Commission Staff Notes set forth in Volume 23 of the Consolidated Laws Service at page 478, the following observations are made:

"Kidnapping cases vary greatly in such respects as the purpose of the abduction or confinement, the duration thereof, the removed distance, the fate of the victim, and the relationship between the abductor and victim. These factors and diverse combinations thereof produce a host of 'kidnapping' cases differing immensely in many respects, including culpability. The principal difficulty with the former law was that the entire spectrum of 'kidnapping' conduct was blanketed under a single 'kidnapping' offense carrying the severest penalties and making little distinction between conduct of the most heinous nature and that involving relatively minor culpability."

The notes go on to explain the method by which the legislature has remedied this defect with the prior law. It is respectfully submitted that the Federal Government has unconstitutionally drafted a kidnapping statute which does not take into account the different degrees of culpability recognized by the New York State Legislature and inherent in the crime of kidnapping and that this failure of the Federal Government violates the cruel and unusual punishment clause of the Eighth Amendment to the Federal Constitution. (It may also violate the due process clause of the Federal Constitution but that is not under review in this appeal.)

POINT II:

THE SENTENCE IMPOSED BY THE TRIAL JUDGE
IS ILLEGAL IN THAT IT CONSTITUTES CRUEL
AND UNUSUAL PUNISHMENT IN VIOLATION OF THE
EIGHTH AMENDMENT TO THE FEDERAL
CONSTITUTION.

Without declaring the statute itself unconstitutional, it is still possible for this court to reduce or overturn the sentence imposed by the lower court judgment with a finding that it violates the cruel and unusual punishment clause of the Eighth Amendment to the Federal Constitution. This was done by a State Court in the case of Workman vs. Commonwealth (Cited above) wherein it was held that life imprisonment without benefit of parole for two 14-year olds, who repeatedly raped a 71-year old woman and then inserted into her person an instrument described as a squeegee mop handle, shocked the general conscience today and was intolerable to fundamental fairness, and therefore violated the Eighth Amendment prohibition of cruel and unusual punishment.

Although cruel and unusual punishment, as a constitutional concept, is a principle which has not traditionally lent itself to precise definition, it is beyond dispute that punishment may be cruel and unusual when, although applied in pursuit of legitimate penal aims, it goes beyond what is necessary to achieve those aims. Dearman vs. Woodson, 429F 2nd 1288.

At least one court has gone so far as to set up a system by which it can analyze whether or not a sentence violates the cruel and unusual punishment clause of the constitution. That court states that a tripartite analysis is necessary to determine whether a penalty is so disproportionate to the offense as to constitute cruel

and unusual punishment. This analysis involves an assessment of the nature of the offense in light of penological purposes of prescribed punishment, and a comparison with other punishments imposed within the jurisdiction where the defendant committed the offense as well as with punishments imposed for similar crimes in other jurisdictions. Commonwealth vs. Jackson (1976, Mass.) 1976 Advance Sheets 735, 344NE 2nd 166.

The foregoing analysis requires that we look into the history of the kidnapping statute to see what type of conduct it was aimed at. The case of Chatwin vs. U.S., 326 U.S. 455 (1945) shed some light on that subject. At pages 462-463 the United States Supreme Court stated the following:

"This statute was drawn in 1932 against the background of organized crime... Kidnapping by that time had become an epidemic in the United States. Ruthless criminal bands utilized every known legal and scientific means to achieve their aims and to protect themselves. Victims were selected from among the wealthy with great care and study... Ransom was the usual motive...."

At page 464 it was stated in part that "were we to sanction a careless concept of the crime of kidnapping or were we to disregard the background in the setting of the act, the boundaries of potential liability would be lost in infinity. A loose construction of the statutory language conceivably could lead to the punishment of anyone who induced another to leave their surroundings to do some innocent or illegal act of benefit to the former, state line subsequently being traversed. The absurdity of such a result, with its attendant likelihood of unfair punishment or blackmail is sufficient by itself to foreclose that construction."

The references in the foregoing quote to loose construction and unfair punishment are very relevant to this case as it is the

defendant's contention that his conduct in the instant case was not of the type against which the kidnapping statute was aimed. However, he falls within the technical strictures of the act and has therefore been subjected to what we believe is unfair punishment. The lower court judge has imposed a very harsh sentence and the result is a very unfortunate state of affairs for the defendant, his family and for our democratic, constitutional system.

POINT III:

THE TRIAL JUDGE ABUSED HIS DISCRETION IN SENTENCING THE DEFENDANT TO 25 YEARS IN PRISON CONSIDERING (1) THE NATURE OF THE DEFENDANT'S CONDUCT IN LIGHT OF THE PENOLOGICAL PURPOSES OF PRESCRIBED PUNISHMENT, (2) COMPARISONS OF THIS PUNISHMENT IMPOSED WITHIN THE SAME JURISDICTION, (3) COMPARISONS OF THIS PUNISHMENT WITH THOSE IMPOSED FOR SIMILAR CRIMES IN OTHER JURISDICTIONS, (4) THE PRE-SENTENCE REPORT OF THE UNITED STATES PROBATION OFFICE, (5) THE EFFECTS OF SAID PUNISHMENT ON THE DEFENDANT AND HIS FAMILY IN LIGHT OF THE PURPOSE SERVED BY SUCH PUNISHMENT.

The defendant's conduct in this affair was not commendable, to be sure. However, insofar as it relates to the alleged kidnapping, one must keep in mind that the victim was returned home within three hours of the time that she was "detained". She stated at the trial that no force was used to get her into the car and that she knew the defendant was coming over to see her well in advance of his arrival. One would have to agree that this is not the normal kidnapping case where the innocent victim is carried away bound and gagged and screaming for her life, and only returned after several days or weeks of hiding and after either a ransom has been paid or the abductor has been apprehended. In this case, the victim was returned to her apartment and she went to sleep that night without calling any law enforcement agency.

The defense feels that comparisons of this defendant's punishment in light of his conduct at the time of the alleged kidnapping, will reveal that his sentence is outrageously disproportionate to the crime he committed. One must keep in mind that the shooting to which Judge McMahon refers in the sentencing minutes was not the subject of this prosecution and the defendant

still faces sentencing on that charge in State Court.

The defendant feels that the sentencing judge in the instant case gave absolutely no consideration at all to the pre-sentence report which was compiled by the United States Probation Office. This conclusion is reached because of the fact that the co-defendant, Gerald J. Brown, received the same sentence that this defendant did, even though the facts revealed by the two pre-sentence investigations must have been very different. Finally, there does not seem to have been any consideration given to the effect that this sentence would have on Mr. Cavallaro's family in light of any legitimate purpose that could be served by such a long period of imprisonment.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT THE SENTENCE OF THE HONORABLE LLOYD F. McMAHON SHOULD BE OVERTURNED OR GREATLY REDUCED BY THIS COURT SO AS TO CONFORM TO THE EIGHTH AMENDMENT TO THE FEDERAL CONSTITUTION AND SO AS NOT TO OFFEND THE CONSCIENCE OF THE COMMUNITY OR VIOLATE JUDICIAL STANDARDS OF FAIRNESS AND JUSTICE.

Respectfully submitted,

JOEL A. SCELSI, ESQ.
Anthony Pelino, of Counsel
Attorney for Appellant
ANTHONY L. CAVALLARO

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 vs.

76-CR-13

5 ANTHONY L. CAVALLARO

6
7 SENTENCING PROCEEDINGS in the
8 above-entitled matter held on the 16th day of September
9 1976 before Hon. Lloyd F. MacMahon, United States District
10 Judge, at The Federal Building, Auburn, New York.
11

12 APPEARANCES:

13 HON. PAUL V. FRENCH,
14 United States Attorney for
15 The Northern District of New York,
Albany, New York,
BY: JOSEPH PAVONE,
Assistant United States Attorney.

16 JOSEPH SCELSI, ESQ.,
17 2609 East Main Street
18 Endicott, New York,
Attorney for Defendant.

1 THE COURT: Mr. Pavone?

2 MR. PAVONE: Your Honor, on July
3 13th, 1976 after a trial by jury in this Court,
4 the defendant, Anthony Cavallaro, was found guilty
5 of the crime of kidnapping and aiding and abetting
6 the kidnapping, a violation of Title 18, United
7 States Code, Sections 1201 (A) and Section 2.
8 The United States moves for imposition of sentence
9 at this time without recommendation.

10 THE COURT: Mr. Pelino?

11 MR. SCELSE: It is Mr. Scelsi,
12 Your Honor.

13 THE COURT: I'm sorry.

14 MR. SCELSE: That's all right, it is
15 on the paper.

16 Your Honor, this situation was one
17 that did develop. It was a spontaneous incident
18 at this particular day. At Court you heard the
19 testimony and had a chance to evaluate the testimony
20 of the various witnesses and so forth. Up to the
21 time that this situation happened, Mr. Cavallaro
22 had had a previous problem with the law back in
23 1968 when he had a couple of assault charges. Since
24 then he has married, worked hard after going to
25 school as an ironworker and laborer and was able to

1 start toward a period of rehabilitation and useful-
2 ness in society until he ran into this particular
3 situation for which I have no excuse and he has no
4 excuse.

5 I do honestly feel, however, that
6 when Mr. Brown went in there to get Mary Shephardson,
7 he felt, he did not realize that force was being
8 used because she came out and got into the car as
9 was testified to by Mr. Baire. The knowledge,
10 I really feel, of intent on his part to forcibly
11 take this girl anywhere was not as exemplified as
12 the jury might have felt. However, they felt they
13 found him guilty and he stands convicted as charged.

14 Mr. Cavallaro's probation record
15 reports he has worked at diligent employment for
16 the last five years. His income has varied in
17 range from eleven thousand dollars a year to
18 fifteen thousand dollars a year. As an ironworker
19 or laborer his work record has been attested to by
20 his union officials as being excellent. He has
21 never been fired for misconduct or for failure to
22 work. He and his wife bought the family home and
23 worked very hard to put the home into use for them
24 and they have had it there for a little over a year,
25 but now this problem faces him.

What I am trying to say is that although he stands convicted of a very serious crime, he was, and I think is readily able to return to society. He has been now incarcerated since the time of the trial. He certainly has had ample time to realize what has happened in this one particular situation. I think he has been candid and honest with the Probation Department in telling them what happened that particular night, and I would submit that I know the Court has an obligation and the Court probably feels that he should be incarcerated and must incarcerate him. He does have a family and of course, having a family does not excuse crime, we all know that, but he does have a family, a father who has done his best to help him in raising him in spite of the fact that he lived with his mother when the parents were divorced, and so he didn't have the benefit of his father for a period of years. He has two children now, small children, aged approximately six and four. His record does indicate that he is capable of working, capable of being useful in society. That record indicates that he has had problems. That record indicates that he probably learned, but fell astray after a period

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1 of time since '68. But I would respectfully ask
2 the Court in sentencing this man to consider the
3 fact that he has worked, has diligently applied
4 his efforts and labors to employment for the past
5 five years. He is well thought of by his workers.
6 Aside from that, he has probably gone overboard
7 to try to provide for his family and got mixed up
8 in this situation that caused all this grief. And
9 I would ask the Court to take this into consideration
10 in sentencing him and give him a sentence that would
11 give him the opportunity to return to his home and
12 family, if they are still there, as expeditiously,
13 as soon as possible.

14 THE COURT: Mr. Cavallaro, do you
15 have anything to say before the Court pronounces
16 sentence?

17 THE DEFENDANT: I would like to say
18 I am very sorry for what happened, scaring Mary
19 the way I did. I really didn't intend to kidnap
20 her. I know the guns were there, and that was the
21 biggest part of it, and the drinking and everything.
22 I just wasn't using good judgment. I am very sorry
23 for what happened. If there was any way that I
24 could apologize or something, I would. Now, this
25 is all hard on my wife and kids and my father and

6

1 mother. I know what I did and I am very remorseful.
2 It was just a stupid thing. I didn't mean for
3 anybody to get hurt, but it just came out that way.

4 MR. SCELSI: May I apologize for
5 his beard, they didn't let him shave this morning.

6 THE COURT: It's all right. Do
7 you have anything else to say?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: What I said about Mr.
10 Brown in this crime is applicable to you and even
11 stronger. You had a better chance of making
12 something of yourself and avoiding a life of crime
13 than he did, well be it the chance, but this crime,
14 as well as your record, demonstrates that you have
15 an uncontrollable temper and that you resort to
16 violence, extreme violence, that you don't hesitate
17 to inflict physical injury on others, that you
18 kidnapped this girl against her will, and drove her
19 into Pennsylvania, participated in firing shots
20 at her, came back and shot her boyfriend. The
21 Court can't let this go. You are a danger to
22 society and you have got to be removed, put away
23 before you murder somebody. The Court sentences
24 you to 25 years. It is my duty to warn you that
25 you have a right to appeal this conviction, that if

1 you wish to appeal, you must file a notice of
2 appeal within ten days. If you have no funds to
3 hire a lawyer, the Court will appoint one free of
4 charge.

5 And I want to tell you what I told
6 Mr. Brown. I could give you a hundred years, and
7 I am sorely tempted to do just that to make certain
8 that you never return to society. I hope that you
9 will grow older and more mature and more sensible
10 in the time that I have given you to confine you,
11 to think about it, to reflect on it, to improve
12 your education, to get some training to the end that
13 when some parole board does see fit to release you,
14 you can still do something for your family and for
15 the community and not ever appear before the Court
16 again. I wish you good luck in that, not because
17 you deserve any, simply because I am mindful of the
18 impact this has on your family. I hope that they
19 aren't here twenty-five years from now, your
20 children. And you can still help to see that that
21 doesn't happen. I hope that you can come back and
22 do something useful for society. You are not
23 without abilities. There is' good and bad in all of
24 us, but here you have just gone to the extreme.

25 You have the right to appeal the

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conviction, as I told you.

MR. SCELST: He has been previously denied bail by this Court. If we could, I would like to apply for bail pending the --

THE COURT: Make your application. Do you have anything to say?

MR. SCELST: Pardon me?

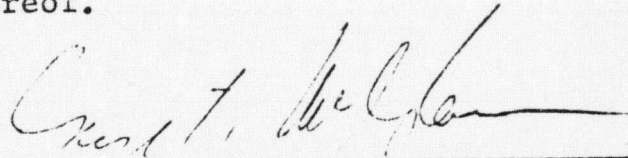
THE COURT: Do you have anything to say?

MR. SCELST: Yes, I would request that the Court will fix bail for him pending appeal so he could --

THE COURT: No, I deny the application. He now faces twenty-five years in prison. That is a strong inducement to flee. He is a menace to the community and must be incarcerated right now. I deny the application for bail pending appeal.

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4 CERTIFICATION
5

6 I, George T. McGloine, Official
7 Court Reporter for The United States District
8 Court in and for The Northern District of New
9 York, do certify this to be a true and accurate
10 transcript of the stenographic record of the
11 foregoing taken at the time and place noted in
12 the heading hereof.

13 
14

15 George T. McGloine
16 Official Court Reporter
United States District Court
Northern District of New York

17
18
19 Albany, New York

20 January 22, 1977
21
22
23
24
25

Dear Sir

C. 4

I'm not sure why I am writing this letter, because I was told by other inmates in here that judges never read the mail sent to them. But I have to try and reach you, and this is the only way I know of.

Sir I lost my appeal in N.Y.C., and as I understand the only thing left for me to do is to ask you for mercy in the form of a sentence reduction, which I guess my lawyer is going to submit to you. I am not sure what the lawyers are doing, because I never hear from them.

I'm not sure if you read my first letter, But I feel I have to try and explain to you how I feel about this tragedy. Sir there isn't words enough to explain how sorry I am for what I did. I realize that threatening Mary and scarring her was a terrible thing for me to do, and God knows I'm so sorry for it, not because I'm sitting in here, But because I know now how

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A-10

scared she must have been, because I am scared to death myself now. Sir I could never shoot anybody I just don't have that kind of stuff in me. Sir I just don't know what got in me that night, maybe it was the money I lost, plus the drinking I was doing, But whatever I seemed to have used very poor judgement in what I was doing.

Sir I'm not like that, I love people and enjoy being with people, I just got so much drink in me that night I lost control of my senses. When Dick got shot at my house, I was so scared and my wife was hysterical and crying I took the gun away from Jerry and got Dick to the hospital. Sir I know I didn't personally take Dick to the hospital and I didn't entrust him to Jerry either. I asked my friend Mike Browka, who was at my house to take him, because my wife was crying and very upset and I was so confused and scared I couldn't think straight. I know I should have taken him myself, but I was just all mixed up, It was something I never

had happen to me before and it was terrifying. Sir I didn't know which way to go, to take Dick to the hospital or to stay with my wife. God I'm so sorry for what happened and what I've done to my parents and my family.

Sir I know with everything that's happen I have to do some time for punishment. I am working here in the tool & die shop learning another trade, I am in the apprenticeship program here. It helps keep my mind occupied and I can also send some money home to help my wife and children.

Sir I'm not sure how to word this, but I guess the best way is to just ask you.

Sir if you could find it in your heart to please reduce my sentence to something where I can get back with my family and society again in the near future. Sir I don't want to stay in here for ten or twelve years like everybody here says I'll have to do. My children will be all grown up and I'll miss seeing them coming up through the years. Do you know what that means to a father, Sir I just can't stand being away from them. Sir I promise

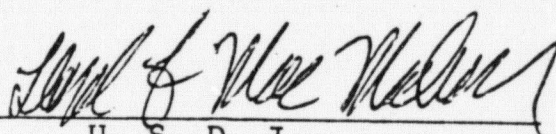
you this I'll never do anything to jeopardize
society and my family again (never). I miss
my wife and children so much I can't even
explain it to you. Sir, please if not for
me, please reduce my sentence for the sake
of my parents and my family. Let me prove
to you the real me.

Sincerely

Anthony Cavallaro

Treating this letter as a motion for the
reduction of sentence, pursuant to Rule 35, Fed.R.Crim.P.,
the motion is in all respects denied. SO ORDERED.

Dated: Auburn, N. Y.
June 2, 1977


U. S. D. J.

AT
J. R. SCULLY, Clerk
AUBURN
O'CLOCK
M.

JUN 2 - 1977

U. S. DISTRICT COURT
U. S. D. J.
FILED

A-13

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

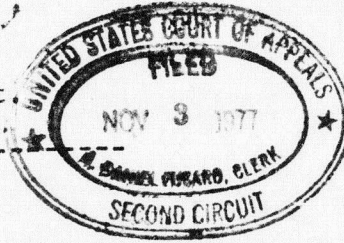
AFFIDAVIT OF SERVICE

-against-

DOCKET #: 77-140

ANTHONY L. CAVALLARO,

Appellant.



STATE OF NEW YORK) SS:
COUNTY OF BROOME)

ANTHONY PELINO, being duly sworn, deposes and says:

1. That I am not a party to the action; am over 18 years of age, and reside at 1903 East Main Street, Endicott, New York.

2. That on October 27, 1977 at approximately 10:00 o'clock in the evening, I served 3 copies of the "Appellant's Brief and Appendix" in the above-entitled matter upon the United States Attorney for the Northern District of New York, Joseph A. Pavone, of Counsel, by mailing the same in an official depository under the exclusive care and custody of the United States Post Office Department within New York State in a sealed envelope with the postage prepaid therein addressed to said United States

Attorney as follows: United States Department of Justice
United States Attorney
Northern District of New York
U.S. Court House and Federal Building
100 South Clinton Street
Syracuse, New York 13202
Attention: Joseph A. Pavone

Anthony Pelino
Anthony Pelino

JOEL A. SCELSI
LAW OFFICES

Sworn to before me this
1st day of November, 1977.

Richard M. Schwartz
NOTARY PUBLIC - BROOME COUNTY

STATE OF NEW YORK, COUNTY OF

SS:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

☐ certify that the annexed
Attorney's has been compared by me with the original and found to be a true and complete copy thereof.
Certification

☐ say that: I am the attorney of record, or of counsel with the attorney(s) of record, for
Attorney's I have read the annexed
Verification

by know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
Affirmation information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon
knowledge, is based upon the following:

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated: (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

SS:

being sworn says: I am

☐ in the action herein: I have read the annexed
Individual know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
Verification information and belief, and as to those matters I believe them to be true.

☐ the of
Corporate a corporation, one of the parties to the action; I have read the annexed
Verification know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

sworn to before me on , 19

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

AFFIDAVIT OF SERVICE
)SS:

, being duly sworn, deposes and says that: deponent is not a party to the
action, is over 18 years of age, and resides at

That on , 19 at No.

deponent served the within
on defendant.

Individual: by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person
described as said defendant therein.

Corporation: a
to
the corporation described in said
individual to be

corporation, be delivering thereat a true copy of each
personally, deponent knew said corporation so served to be
as said defendant and knew said
thereof.

Description: Deponent describes the said individual served as follows: SEX: SKIN COLOR:
HAIR COLOR: APPROX. HEIGHT: APPROX. WEIGHT: OTHER
IDENTIFYING FEATURES:

Sworn to before me on

19

NOTARY PUBLIC

Index No.

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

ANTHONY L. CAVALLARO,

Appellant.

AFFIDAVIT OF SERVICE

DOCKET #: 77-140

JOEL A. SCELSE

Attorney for

Appellant

OFFICE & POST OFFICE ADDRESS

2609 EAST MAIN STREET

ENDICOTT, NEW YORK 13760

(607) 748-8266

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐ NOTICE OF ENTRY that the within is a (certified) true copy of a
entered in the office of the clerk of the within named court on

19

☐ NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court,
at
on 19 , at M.

Dated:

JOEL A. SCELSE

Attorney for

OFFICE & POST OFFICE ADDRESS

2609 EAST MAIN STREET

ENDICOTT, NEW YORK 13760

To:

